



Reply to
Attn Of: HW-113

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

APR 28 1993

MEMORANDUM

SUBJECT: Audit Report No. P5CG*8-10-0076-1100146
Final Audit of Cooperative Agreement No. V-000282-01
Colbert Landfill
Washington Department of Ecology

FROM: Kirk Robinson, Chief *Kirk Robinson*
Contracts and Information Section

TO: Allen M. Orand, Audit Manager
Office of the Inspector General for Audits

Attached is the draft Final Determination for the above-referenced audit. We are requesting your review and concurrence on this document. This audit contained several significant findings, including several procurement issues and the equitable allocation of leave issue. For the allocation of leave issue, we are proposing essentially the same resolution for this audit as we have under the previous audits for which we have submitted draft Final Determinations for your review.

In addition, not all the costs recommended for disallowance in this audit report were discussed in the findings of the report. A small amount of the disallowed costs were mentioned only as notes to financial tables. In the future, both the State and EPA will be better served by full discussion of disallowed costs as findings of the audit.

If you believe any of these issues warrant further discussion, Region 10 management has indicated a willingness to meet with you and representatives of your staff to try and resolve the issues.

If you have any questions or comments, please contact me at (206) 553-2104.

Attachment

cc: Bettina Stokes, Grants Administration/Region 10
Robert Adachi, OIG

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cc: Bettina Stokes, Grants Administration/Region 10
Robert Adachi, OIG

bcc: Neil Thompson
Mike Stoner
Kathy Davidson

FINAL DETERMINATION

Audit Report No. P5CG*8-10-0076-1100146
Report on the Final Audit of Cooperative Agreement No. V-000282-01
Colbert Landfill
Washington Department of Ecology
Olympia, Washington

This document presents EPA's final determination regarding the findings in the above referenced audit of the Colbert Landfill Cooperative Agreement, V-000282-01.

Overall EPA believes that significant benefits were derived from the work performed by Ecology under this cooperative agreement. EPA will continue to work with Ecology to develop and implement a successful Federal-State partnership for the Superfund program.

This audit contained findings and recommendations related to procurement procedures and allocation of leave. Ecology submitted comments to the Office of the Inspector General (OIG) in response to the audit. EPA reviewed these findings and recommendations, and Ecology's comments, then discussed them with both Ecology and the OIG. Based on our review of the audit report and these discussions, EPA has made the following determinations regarding this audit:

FINDINGS

1. Inadequate Procurement Procedures.

The OIG found that Ecology did not have a self-certified procurement system under 40 CFR Part 30. As a result, EPA was required to review and approve all procurement actions. However Ecology did not submit, nor did EPA request submittal of, procurement actions for EPA's review and approval. In addition, the OIG had three other specific findings (1A-C, below) that relate to Ecology's procurement process. In total, the OIG questioned as "ineligible" for Federal participation, costs totalling \$32,110, and questioned as "unsupported" for Federal participation, costs of \$692,093.

EPA Review:

The period of performance of this cooperative agreement, May 1984 through September 1987, was a time when both EPA and Ecology were implementing new programs and bringing new staff on board. For both agencies, staffing levels (workyears) were not sufficient to cover all work under these new programs. As a consequence, it is quite probable that some administrative details of the program were inadvertently overlooked for lack of time to address them. Under this situation, the responsibility for the lack of review and approval of procurement actions is shared by both Ecology and EPA.

It should be noted that Ecology now self-certifies its procurement system under 40 CFR Part 30. In addition, the relationship between EPA and Ecology has evolved to the point that Ecology rarely, if ever, uses contracts to conduct work specified in any cooperative agreement.

Corrective Action:

In addition to the corrective actions required here, specific corrective actions are detailed for each of the sub-findings (A-C), below.

Ecology is directed to review its contracting and procurement processes, then develop and implement the necessary procedures that will ensure that procurement regulations (either self-certification of procurement systems or EPA review and approval of contracting actions) are followed and documented. These procedures shall be in place within 180 days of receipt of this document.

1A. Cost and Price Analysis were not performed as required by 40 CFR Part 33.290.

The OIG could not find evidence that cost and price analysis were performed on a number of contract actions.

EPA Review:

EPA reviewed randomly selected contracting files related to the subject audit. EPA found that not all of Ecology's procurement files contained cost and price analysis documentation. However, on the few files that contained sufficient documentation, it appears that Ecology did perform a basic cost and price analysis.

Corrective Action:

Ecology is directed to review its contracting and procurement processes, then develop and implement the necessary procedures to ensure that cost and price analyses are performed and appropriately documented. These procedures shall be in place within 180 days of receipt of this document.

Because EPA derived benefit from the work performed by Ecology under these contract actions, EPA will not disallow for Federal participation the costs found unsupported (\$692,093) for the following reasons:

- EPA derived benefit from Ecology's efforts on the Colbert Landfill site. To require repayment of all contract costs based on, in all probability, incomplete files has the perception of being punitive to the State.
- It appears, despite the condition of the files, that Ecology did conduct some form of basic cost and price analysis.

In addition, Ecology is directed to improve its record keeping procedures to ensure that cost and price analyses are adequately documented in the future.

1B. A cost-plus-percentage-of-cost work assignment was awarded, which is unallowable under 40 CFR 33.285.

The OIG found that a work assignment (#1) awarded to Golder and Associates was classified as a cost-plus-percentage-of-cost type of work assignment. As a result, the OIG declared as ineligible for Federal participation, costs of \$32,110.

EPA Review:

In reviewing this finding with Ecology, Ecology claimed that the contracting action in question was actually a cost-plus-fixed-fee work assignment. EPA examined the subject work assignment and found that management of the work assignment was consistent with a cost-plus-fixed-fee contract. In addition, EPA reviewed the other work assignments under the same contract. On all other work assignments it clearly states that the work assignment is cost-plus-fixed-fee. EPA also examined a number of other contracts and work assignments awarded by Ecology during the same time period. EPA found that Ecology consistently used cost-plus-fixed-fee type contracts. As a result, EPA believes that this work assignment was a cost-plus-fixed-fee type work assignment. Ecology could have done a better job documenting the type of work assignment on the contract documents.

Corrective Action:

EPA's believes that the work assignment questioned was a cost-plus-fixed-fee type of work assignment. A comparison to other work assignments under the same contract showed that all the other work assignments were cost-plus-fixed-fee. In addition, Ecology's management of the work assignment was consistent with managing a cost-plus-fixed-fee contract. As a result, EPA is supporting all questioned costs associated with this finding.

However, Ecology is directed to review its contracting and procurement procedures, then develop and implement appropriate procedures to ensure that all future contracts used under cooperative agreements are properly documented as eligible contracts under 40 CFR 33.285. These procedural improvements shall be implemented within 180 days of receipt of this document.

- 1C. Written justification for the type of subagreement was not contained in the procurement files as required by 40 CFR 33.250(a)(4).

The OIG found that Ecology's contract and procurement files did not contain the specified documentation required under Federal regulations.

EPA Review:

As noted above, when EPA reviewed the files for cost and price analyses, the files were found to be incomplete and lacking full documentation of the procurement process.

Corrective Action:

Ecology is directed to review its contract and procurement file structure and file management procedures to ensure that it meets 40 CFR Part 33 requirements. Within 180 days of receipt of this document, Ecology shall implement improvements to their file management procedures necessary to meet Federal requirements.

2. Labor Distribution Weaknesses.

The OIG found that Ecology's system for allocating holiday and leave costs did not comply with OMB Circular A-87, which requires an equitable system of allocating leave costs. The OIG found that leave costs were based on the judgement of the supervisor to allocate leave based on recent projects to which time had been charged. As a result the OIG found all personnel and related costs "unsupportable" for Federal participation and recommended that EPA disallow all costs (\$68,096)

covering direct labor, fringe benefits, and indirect costs related to direct labor.

EPA Review:

The Superfund program, with its emphasis on cost recovery, requires a system of time and cost accounting more rigorous than that of other programs. As a result, auditors are looking very closely at the leave allocation systems and whether they are "equitable" in accordance to OMB Circular A-87. While Ecology has used the same time accounting system for all its programs, Superfund represents the first time that the leave allocation policies of Ecology have been questioned. Questions have been raised by several states and EPA as to the criteria for an "equitable" leave allocation system, as none are defined in the OMB circular. In addition, an examination of how leave costs were charged revealed that Ecology tended to undercharge leave to the cooperative agreement, and absorb the bulk of the leave costs against State accounts.

Corrective Action:

EPA is directing Ecology to develop and implement an equitable leave allocation system. EPA will work with Ecology to define criteria for what is an "equitable" system for allocating leave. Ecology, using the agreed upon criteria, will then develop and implement an equitable leave allocation system within 180 days. However, EPA will not require Ecology to reallocate past costs or reimburse EPA for Ecology's share of costs "questioned" as unsupported for Federal participation for the following reasons:

- While the cost in time and dollars to reallocate leave costs is not significant in relation to the total costs of the agreement, requiring Ecology to do a reallocation would not be cost effective in terms of adding value to either the cooperative agreement or the Superfund program.
- The current budgets of Ecology and/or EPA would be hard pressed to support both the cost in workyears and any necessary funding adjustments that might be necessary as a result of the reallocation of costs.
- There are no considerations for EPA's cost recovery program, as EPA has fully settled all costs and response actions with the Potentially Responsible Parties for the Colbert Landfill site.
- EPA derived benefit from Ecology's efforts on the Colbert Landfill site. To require repayment of all personnel costs based on how leave is charged (particularly when leave appears to be undercharged to this agreement) has the perception of being punitive to the State.

COSTS NOT ADDRESSED IN FINDINGS

In addition to the specific costs identified above, the OIG recommended that EPA disallow additional costs not addressed in the findings. The costs were identified as follows:

- Indirect costs of \$586 because Ecology did not adjust their 1985 indirect cost rate to reflect the final negotiated rate.
- Travel costs of \$200 for which Ecology could not provide supporting documentation.

Both of these recommendations for disallowing costs were contained in notes to financial summaries of the findings and were not discussed elsewhere in the audit report.

Corrective Action:

Ecology did not dispute either of these costs as being questioned. EPA concurs with the OIG that these costs (\$786) will be disallowed for Federal participation.

OIG RECOMMENDATIONS

1. Advise Ecology that the costs questioned of \$793,085 are disallowed for Federal Participation.

Ecology is advised that EPA is disallowing costs of \$786 for Federal Participation. EPA will not disallow for Federal participation any of the other questioned costs.

2. Obtain recovery of the \$222,064 of Federal funds paid in excess of the amount accepted in this report.

Ecology is directed to repay \$220, representing EPA's share of the disallowed costs.

3. Require Ecology to establish procedures to ensure that:

- Procurements are made in accordance with the requirements of 40 CFR Part 33.

Ecology is directed to develop and implement procedures designed to improve its record keeping for contracts and procurement. These procedural improvements shall be in place within 180 days of receipt of this document. It is noted that Ecology now self-certifies that its procurement system under 40 CFR Part 30.

- Leave costs are allocated in accordance with OMB Circular A-87.

Ecology is directed to develop and implement an equitable leave allocation system. EPA is committed to working with Ecology to develop criteria for what is an acceptable system for allocating leave. Once the criteria are in place, Ecology shall develop and implement an equitable system for allocating leave within 180 days.

SUMMARY

EPA is disallowing costs of \$786 for Federal Participation. Ecology is directed to repay EPA \$220 representing EPA's share of the disallowed costs. EPA is allowing for Federal participation all other costs questioned for Federal participation, a total of \$792,299.

However, Ecology is directed to make several improvements to their management procedures, particularly in the areas of procurement and financial management (leave allocation system).